
GUIDELINES

FOR

NEGOTIATING

AGREEMENTS

BETWEEN

STOCKING REPS

AND

MANUFACTURERS



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These Guidelines for an Agreement between a Manufacturer and a Sales Representative Who Takes Title to the Products does not cover all possible situations, but is intended only as a checklist of some of the matters that may be covered. These guidelines are not to be construed as a recommendation, as every relationship between a manufacturer and a representative who takes title to products is special and cannot be covered by one standard agreement. Each agreement should be individually negotiated and prepared, and your attorney should be consulted concerning negotiation problems and formalizing the agreement.

Guidelines for Negotiating an Agreement between Stocking Representatives and Manufacturers

THIS AGREEMENT, made this _____ day of _____, 20____, by and between _____, incorporated under the laws of the State of _____, (hereinafter called "Manufacturer"), and _____, who lives at _____, in the city of _____ and State of _____ (hereinafter called "Stocking Representative" or "S.R."), as follows:

A. APPOINTMENT - Manufacturer does hereby appoint S.R. as a Stocking Representative of Manufacturer's products sold by it from time to time. (Manufacturer may also designate S.R. as the exclusive Stocking Representative in a specific area.)

B. SALE OF PRODUCTS OF OTHER MANUFACTURERS AND APPOINTMENT OF OTHER STOCKING REPRESENTATIVE - S.R. reserves the right to sell products of other manufacturers and Manufacturer reserves the right to appoint such additional stocking Representatives which it feels will afford maximum coverage and sales. (If Manufacturer designates S.R. as its exclusive Stocking Representative in a specific area, the Manufacturer may attempt to restrict S.R.'s right to sell competitive products. In such an event, the first part of the above provision should be deleted and a typical provision like the following substituted: "While this Agreement is Force, S.R. shall not, without manufacturer's written consent, sell products in _____ (designate specific area) which are competitive with the products of Manufacturer then being sold by S.R.)

C. MANUFACTURER'S COMMITMENTS -

1. Terms of Sale - Manufacturer agrees to sell to S.R. at such prices as upon such terms and conditions as Manufacturer shall establish from time to time. Terms of sale in effect on the date hereof are. All products will be shipped to S.R.f.o.b. Manufacturer's plant. Manufacturer reserves the right to change all prices, terms and conditions of sale and will give S.R. _____ days' written notice in the event of such changes: (The following are typical provisions covering Price Reductions and Price increases.)

a. Price Reductions - All orders received by manufacturer which have not been shipped prior to the effective date of the price reduction and all orders submitted to Manufacturer during the notice period will be filled at the lower price. (Some Manufacturers may also allow S.R. credit on products in stock or give S.R. products in an amount equal to the difference between the original price of the products in stock and the new lower price).

b. Price Increases - All orders received by Manufacturer before the effective date of the increase will be invoiced at the published price which it is in effect prior to the increase. (The price or quantity of a minimum order may also be included in this provision.)

2. Delivery of Products - Manufacturer will make every reasonable effort to fill S.R.'s orders promptly, but it is agreed that Manufacturer will not be responsible for late delivery resulting from any cause beyond its control. Manufacturer reserves the right to allocate its production and/or inventory in any manner it deems best.

3. Acceptance or Rejection of Orders - Manufacturer shall have the right to require prepayment of any S.R.'s orders if Manufacturer in its judgement determines that S.R.'s credit warrants such action.

4. Warranties -

(The Manufacturer's warranty should be set forth in this provision and reference made to the procedure for the return of defective products to Manufacturer. The following is a typical provision:

"Manufacturer's products are warranted to be free from defects caused by faulty materials or workmanship for a period of _____ days from the date of shipment to S.R.'s customer. The liability of manufacturer under this warranty is limited to repairing, replacing or at its option issuing credit for any of its products which are returned by S.R. during such period provided, however, that:

- a. Manufacturer is promptly notified by S.R. following any product failure; and
- b. Manufacturer, in writing, authorizes the return of such defective merchandise; and
- c. Defective merchandise is returned to Manufacturer accompanied by a report of findings indicating the basis for rejection and with transportation charges prepaid by S.R. ; and
- d. That such defects exist and have not been caused by abuse, misuse, neglect, improper installation, repair, alteration, or accident.

The manufacturer may also desire to negate certain responsibilities in the following manner and such negation must strictly comply with State Laws:

“IN NO EVENT SHALL MANUFACTURER BE LIABLE FOR COLLATERAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, EXCEPT AS TO TITLE, AND MAY BE CHANGED BY MANUFACTURER ON WRITTEN NOTICE TO STOCKING REPRESENTATIVE.”)

5. Adjustment of Inventory -

(All manufacturers do not permit an S.R. to adjust its inventory by accepting the return of slow moving merchandise. If a Manufacturer does permit an adjustment of inventory, the policy should be included under this heading. The following is a typical provision authorizing an adjustment of inventory:

“S.R. may at its option at any one time within a calendar year, exchange manufacturer’s products having a dollar value at its cost equal to ___% of the total purchases made by S.R. from Manufacturer in the preceding calendar year, for products of an equivalent price. S.R. agrees to pay manufacturer a handling charge in the amount of ___ % of the cost of the products returned, and to notify manufacturer not less than ___ days in advance of shipment of the products to Manufacturer. The products being returned must be shipped prepaid in the same condition as when purchased, and S.R. will also pay the freight on the replacement products begin shipped to S.R.”)

6. Order Protection - (If manufacturer’s policy includes order protection, the policy should be included under this heading.)

7. Standard Packaging - All of Manufacturer’s products are packaged for customary methods of shipment.

8. Referrals -

a. Inquiries - manufacturer should refer to the S.R. in answer to inquiries made to the manufacturer by customers. The name of the S.R. should be indicated on quotations and letters to customers and the S.R. should receive copies of the same.

b. Orders - If the manufacturer has a policy of referring orders below a given quantity to the S.R., the policy should be stated under this heading. The following is a typical provision:

“Manufacturer will refer orders for standard items from customers in the S.R. area to the S.R. for filing. The orders referred to the S.R. for filing will be for _____ pieces or less.”

9. Advertising and Promotion - For the purpose of promoting its products, Manufacturer will advertise in appropriate national trade publications and will exhibit in appropriate trade shows.

10. Catalogs, Literature, and Other Promotional Material - Manufacturer will supply, at no charge to S.R. reasonable quantities of catalogs, sales literature and samples required by S.R.

11. Advertising Materials - Manufacturer will provide, at no charge, suitable engravings, photo prints and copy material to assist S.R. with its own catalog and advertising programs.

12. Distributor Advertising

(If Manufacturer provides funds for cooperative advertising the policy should be set forth under this heading. If not, the following is a typical provision:

“S.R. will be responsible for its own advertising and sales promotion and Manufacturer will assume no advertising expense of S.R.”)

13. Notification of Engineering Changes - Manufacturer will keep S.R. advised of all major engineering changes in its products.

14. Notification of Availability of New Products - Manufacturer will provide advance notice to S.R. of all new products to be added to the line.

15. Sales Meetings

(If Manufacturer holds sales meetings for S.R. personnel, the following is a typical provision:

“Manufacturer will arrange S.R. sales meetings from time to time to acquaint S.R. personnel with Manufacturer’s products and policies.”)

16. Repurchase of Inventory Upon Termination

(If manufacturer has a policy of repurchasing inventory upon termination, it should be included under this heading. Some Manufacturers permit S.R. to return its products upon certain terms and conditions and at certain prices. Other Manufacturers require that S.R. resell its products to manufacturer upon termination.)

17. Manufacturer shall be solely responsible for all the design, development, production and performance of its products and agrees to indemnify and hold S.R. harmless from and against, and to pay all losses, costs, damages, or expenses whatsoever which S.R. may sustain or incur on account of infringement or alleged infringement of patents, trademarks or trade names resulting from the sales of Manufacturer’s products or arising on account or warranty claims or produce liability matters. S.R. will promptly deliver to Manufacturer any notice or papers served upon it in any proceeding covered by this indemnity and Manufacturer will defend same at its expense. S.R. shall, however, have the right to participate in the defense at its own expense. Manufacturer also agrees to include S.R. as an additional assured on any product liability insurance policy maintained by it, and to submit a copy of the policy and any renewal policies to S.R.

D. STOCKING REPRESENTATIVE’S COMMITMENTS -

1. Inventory Requirements

(If Manufacturer requires that S.R. stock a specific quantity or dollar amount of products, the following is a typical provision:

“S.R. will carry a inventory of Manufacturer’s products in quantities not less than those recommended from time to time by Manufacturer, said inventory being based on Manufacturer’s determination of the potential of the market area in which S.R. is located.”)

2. Purchase Orders - S.R. will place all orders by written purchase order which orders shall be subject to the provisions of this Agreement. Any provision of a purchase order inconsistent with this agreement shall be null and void.

(If Manufacturer accepts oral purchase orders, the following is a typical provision:

“Manufacturer will honor informal purchase orders only where an order number and name of person placing order are given, and the order is confirmed by a formal purchase order.”)

3. Compliance with Terms of Sale - S.R. shall adhere to Manufacturer’s terms and conditions of sale and take no unauthorized discounts.

4. Distributor Reports - S.R. agrees to furnish Manufacturer with inventory and sales reports in such form and at such times as Manufacturer may from time to time request.

5. Use of Trademarks - S.R. is authorized to use Manufacturer’s trademarks and trademarks in connection with selling, promoting and advertising Manufacturer’s products, but no use thereof shall give S.R. any interest in said trademarks and trade names in any way which would imply or convey the impression that S.R. is an agent, employee, subsidiary, or affiliate of Manufacturer. The right to use any of said trademarks and trade names shall terminate upon this Agreement.

6. Examination of Distributor’s Inventory

(If Manufacturer periodically checks S.R.’s inventory, the following is a typical provision:

“S.R. will permit Manufacturer’s representative, at reasonable times, to examine S.R.’s inventory to help Manufacturer establish proper inventory requirements.”)

7. Promotional Effort by S.R. - S.R. will actively sell, promote and advertise Manufacturer’s products.

8. Action on Inquiries

(If manufacturer refers inquiries, the following is a typical provision:

“S.R. will effectively and promptly follow up referrals and keep Manufacturer to its representative of results.”)

9. Listings in a S.R.’s Catalogs

(If S.R. publishes a catalog, the following is a typical provision:

“S.R. will list Manufacturer’s products in its catalog and submit copy to Manufacturer for approval in advance of publication.”)

10. Sales Meetings Held for S.R. Personnel - S.R. will keep Manufacturer informed of scheduled sales meetings, will provide adequate time at its sales meetings for Manufacturer’s products and will allow Manufacturer’s personnel to participate.

11. Submission of Credit and Financial Information - S.R. agrees to furnish Manufacturer with such current financial information as it may form time to time request.

12. Damage Transit

(This will vary, depending upon who drafts the Agreement. The Manufacturer will want S.R. to be responsible for damage in transit, and S.R. will want the Manufacturer to be responsible for damage in transit. A typical manufacturer drafted provision is as follows:

“Title to products shipped passes on delivery thereof to the carrier. Manufacturer’s liability for damage in transit or delay ceases when the shipment is accepted by the carrier. S.R. will make all claims for merchandise damaged in shipment or for undelivered merchandise with the carrier.”)

(A typical S.R. drafted provision is as follows:

“Title to products shipped does not pass to S.R. and S.R. shall not be liable for purchase price until receipt, inspection and acceptance by S.R. Manufacturer will bear the risk of loss or damage in transit.”)

E. DISPUTES AND ARBITRATION - The parties agree that any disputes or questions arising hereunder, including the construction or application of this Agreement, shall be settled by arbitration in accordance with the rules of the American Arbitration Association then in force. If the parties cannot agree upon an arbitrator within ten (10) days after demand by either of them, either or both parties may request the American Arbitration Association to name a panel of five (5) arbitrators. The decision of the arbitrators shall be final and binding upon the parties, both as to law and to fact, and shall not be appealable to any court in any jurisdiction. Judgement on the award may be entered in any court having jurisdiction. The expenses of the arbitrator shall be shared equally by the parties unless the arbitrator determines the expenses shall be otherwise assessed.

F. TERM AND TERMINATION - This Agreement shall be effective from the date hereof and shall continue in force until terminated by either party at the end of any calendar month, by giving not less than ____ day’s written notice to the other by registered or certified mail.

G. GENERAL -

1. S.R. as an Independent Contractor - Nothing in this agreement shall be construed or constitute S.R. as the agent of Manufacturer, nor shall either party have any authority to bind the other in any respect, it being intended that each shall remain an independent contractor responsible only for its own actions. S.R. agrees that it will not, either directly or indirectly represent to any person that it possesses authority to obligate Manufacturer in any manner.

2. Notices - All notices provided for in this agreement shall be sent by registered or certified mail to the parties at the addresses indicated above, unless either party changes address by written notice to the other.

